

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1191.

148

No. 5, SPECIAL CALENDAR.

JOHN F. COSTELLO, APPELLANT,

vs.

**AULICK PALMER, MARSHAL OF THE UNITED STATES
IN AND FOR THE DISTRICT OF COLUMBIA.**

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 19, 1902.

In the Court of Appeals of the District of Columbia.

JOHN F. COSTELLO, Appellant,
vs.
AULICK PALMER, U. S. Marshal, D. C. } No. 1191.

a Supreme Court of the District of Columbia.

JOHN F. COSTELLO, Petitioner, }
vs. } No. 306. *Habeas Corpus*.
AULICK PALMER, Respondent. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit :

1 *Petition for Writ of Habeas Corpus.*

Filed June 25, 1901.

In the Supreme Court of the District of Columbia.

JOHN F. COSTELLO, Petitioner, }
vs. } No. 306. *Habeas Corpus*.
AULICK PALMER, Respondent. }

The petition of John F. Costello respectfully represents as follows :

1. He is a citizen of the United States and a resident of the District of Columbia.

2. The respondent is a citizen of the United States and a resident of the District of Columbia, and is the marshal of the United States of America in and for the said District.

3. The petitioner is unlawfully restrained of his liberty by the respondent under the following circumstances and conditions :

On May 2, 1901, the petitioner was sued for debt before Charles S. Bundy, Esquire, a justice of the peace in and for the said District, by the Bokel, Gwynn, McKenney Company, a corporation, and on May 11, 1901, the said justice rendered judgment against the petitioner and in favor of the said corporation for the sum of one hundred dollars and fifty-three cents (\$100.53), with interest from February 28, 1900, and costs of suit.

On June 19, 1900, the said corporation, plaintiff, caused a certified copy of the said judgment against the petitioner to be filed and docketed in this court, and on the same day ordered execution on the same to be issued by the clerk. On such order, the said clerk issued a writ of *feri facias* on the said judgment, and on June 21, 1901, the respondent, marshal as aforesaid, by direction in writing of the attorneys of the said plaintiff, returned the said writ "*nulla bona*."

Thereupon, and on the same day, to wit, June 21, 1901, the said plaintiff filed the affidavit of Albert H. Wilson, its treasurer, in supposed conformity with the provisions of section 794 of the Revised Statutes of the United States relating to the District of Columbia, and thereupon procured the said clerk to issue, and the said clerk did issue, the writ of *capias ad satisfaciendum*, addressed to the respondent and commanding him to take the body of the petitioner in execution of the said judgment; and the respondent took and now has the body of the petitioner in pursuance of the said last-mentioned writ.

The premises considered, the petitioner therefore prays that the writ of *habeas corpus* may issue to the respondent, commanding him to produce before this court the body of the petitioner, together with the cause of his detention, in order that the same may be inquired into and the judgment of this court given thereon according to law.

JOHN F. COSTELLO, *Petitioner*.

DAVIS & TUCKER,
Attorneys for Petitioner.

3 DISTRICT OF COLUMBIA, ss:

John F. Costello, being first duly sworn, deposes and says that he has heard read the foregoing petition by him subscribed, and that the statements therein made are true to the best of his knowledge and belief.

JOHN F. COSTELLO.

Subscribed and sworn to before me this 25th day of June, A. D. 1901.

J. R. YOUNG, *Clerk*,
By F. W. SMITH, *Ass't Clerk*.

Endorsed.

Let writ issue as within prayed, returnable forthwith.

JOB BARNARD, *Justice*.

June 25, 1901.

4

Writ of Habeas Corpus.

Issued June 25, 1901.

DISTRICT OF COLUMBIA, *To wit:*

The President of the United States to Aulick Palmer, marshal of said District, Greeting:

You are hereby commanded to have the body of John F. Costello, detained under your custody, as it is said, together with the day and cause of his being taken and detained, by whatever name he may be called in the same, before the Honorable Job Barnard, one of the justices of the supreme court of the said District, at United States court-house, Washington city, immediately (25th of June, 1901, at 12.30 o'clock — m.) after the receipt of this writ, to do and receive whatever shall then and there be considered of in this behalf; and have then there this writ.

Witness E. F. Bingham, chief justice of said supreme court, the 25th day of June, 1901.

[SEAL.]

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

Marshal's Return.

Returned June 25, 1901, service accepted.

AULICK PALMER, *U. S. Marshal, D. C.*
R.

4½

(Endorsed.)

June 25, 1901.—I hold the body of John F. Costello under the writ of *capias ad satisfaciendum* mentioned in the petition in this case and which is asked to be considered as a part of this return, and produce said Costello in court.

AULISK PALMER,
U. S. Marshal, D. C.

5

Order Dismissing Petition—Appeal.

Filed January 22, 1902.

In the Supreme Court of the District of Columbia.

In re JOHN F. COSTELLO. No. 306. *Habeas Corpus.*

This cause coming on to be heard upon the petition for a writ of *habeas corpus*, and having heard the arguments of counsel, it is this 22nd day of January, 1902, ordered that the petition be, and is hereby, dismissed, and that the petitioner, John F. Costello, be remanded to the custody of the marshal in and for the District of Columbia.

E. F. BINGHAM, *C. J.*

Appeal to Court of Appeals noted by the petitioner and penalty of bond for costs fixed at fifty dollars.

Memorandum.

January 22, 1902.—Appeal bond filed.

Order Allowing Petitioner to Give Bail.

Filed January 22, 1902.

In the Supreme Court of the District of Columbia.

In re JOHN F. COSTELLO. *Habeas Corpus.* No. 306.

The petitioner having appealed to the Court of Appeals of the District of Columbia from the judgment discharging the writ of *habeas corpus* and remanding him into custody, and having prayed that he be enlarged on recognizance pending the determination of the said appeal, it is this 22nd day of January, 1902, ordered that the petitioner be enlarged on his recognizance in the sum of three hundred dollars (\$300), with surety to be approved by the court, until the 1st day of March, 1902, with leave to the said petitioner on or before said day to apply to the court for further enlargement on such recognizance pending the determination of his said appeal.

E. F. BINGHAM,
Chief Justice.

Recognizance.

Filed January 22, 1902.

In the Supreme Court of the District of Columbia, Holding a Criminal Court.

In re JOHN F. COSTELLO. No. 306. *Habeas Corpus.*

The petitioner and Timothy Brosnan, his surety, acknowledge themselves indebted to the United States in the sum of three hundred dollars, to be levied of their and each of their lands and tenements, goods and chattels, if the said petitioner fails to appear before this court on the 1st day of March, 1902, or if the said petitioner depart the court without leave.

Acknowledged in open court before me—

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN,
Assistant Clerk.

Surety examined and approved by

CHIEF JUSTICE BINGHAM.

8

Proceedings Before C. S. Bundy, J. P.

Filed June 19, 1901.

DISTRICT OF COLUMBIA, *To wit* :

In justice's court, before C. S. Bundy, one of the justices of the peace in and for the District aforesaid, this 22nd day of May, A. D. 1901, in the case of—

<p>THE BOKEL, GWYNN MCKENNEY COMPANY of Baltimore City, a Corporation, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p>JOHN F. COSTELLO, Defendant.</p>	}	<p>At Law. No. 13166, 44755. Action for Debt for \$100.53.</p>
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Date.

Proceedings.

1901.

May	2. Issued summons to Constable Callahan, returnable May 4th, at 3.30 p. m.
“	“ Summons served as directed.
“	4. Parties appeared and on motion of defendant continued to May 8, 10 a. m.
“	8. Parties appeared and on motion of defendant again continued to May 11th, at 2 p. m.
May	11. Plaintiff appeared and claimed judgment on affidavit under the eleventh rule. Defendant did not appear.
“	“ Judgment for plaintiff <i>for plaintiff</i> for \$100.53 debt, with interest from February 28, 1900, and \$1.85 costs.
May 22nd.	

Execution issued to B. B. Callahan, constable, who, on the 22nd day of May, 1901, duly returned the same, “No personal property found whereon to levy.”

C. S. BUNDY, J. P. [SEAL.]

I, Charles S. Bundy, one of the justices of the said county and District, do hereby certify that the foregoing is a true copy of the judgment and proceedings in the above cause.

Given under my hand and seal this 22nd day of May, A. D. 1901.

C. S. BUNDY, J. P. [SEAL.]

Costs paid by plaintiff, \$3.45.

Costs paid by defendant, \$——.

Affidavit for Capias ad Satisfaciendum.

Filed June 21, 1901.

In the Supreme Court of the District of Columbia.

<p>THE BOKEL GWYNN MCKENNEY COMPANY of Baltimore City, a Corporation Duly Or- ganized under the Laws of the State of Maryland,</p>	}	At Law. No. 44755.
<p>vs. JOHN F. COSTELLO.</p>		

STATE OF MARYLAND, }
City of Baltimore, } ss :

Albert H. Wilson, being first duly sworn, makes oath according to law that he is the treasurer and agent of The Bokel Gwynn McKenney Company of Baltimore City, a corporation duly organized under the laws of the State of Maryland, the plaintiff in the above-entitled cause; that on the second day of May, A. D. 1901, suit was instituted by said plaintiff before Charles S. Bundy, one
10 of the justices of the peace in and for the District of Columbia, against the defendant, John F. Costello, and such proceedings were had therein that on the thirteenth day of May, A. D. 1901, the plaintiff recovered judgment against the defendant, John F. Costello, for the sum of one hundred dollars and fifty-three cents (\$100.53), with interest thereon from the twenty-eight day of February, A. D. 1900, and costs of suit, and that the record and judgment in said cause was duly filed in the supreme court of the District of Columbia; that after the institution of said suit, and before the obtaining of said judgment, the defendant, John F. Costello, conveyed away, lessened, and disposed of his property, rights, and credits, as the plaintiff believes and affiant avers, with intent thereby to hinder or delay the recovery of its debts; that at the time of the institution of said suit the said John F. Costello was the owner in his own right of an undivided one-fifth interest in part of lots nineteen and twenty, in square numbered four hundred and fifty-five, contained within the following metes and bounds, viz: beginning for the same at the northeast corner of said square and running thence south on Sixth street twenty-five feet, thence west one hundred and one feet six inches to a public alley, thence along said alley twenty-five feet to G street, and thence east along G street to the place of beginning; that by deed dated May 4, 1901, recorded May 8, 1901, in Liber 2570, folio 95, among the land records of the District of Columbia, the said John F. Costello conveyed all of his interest and estate in the said property, which was of great value, to one Jeremiah A. Costello, his brother, who had full knowledge and notice of the institution of said suit, the consideration named in the

11 said deed being ten dollars; that no consideration was paid for the said property, but the said conveyance was executed and delivered by the defendant, John F. Costello, for the purpose of hindering or delaying the recovery or payment of the debts of the said John F. Costello, including the debt due to and the judgment held by the plaintiff herein, and that by reason of the matters and things aforesaid the defendant has rendered himself and now is wholly insolvent and has no property, assets, or means out of which the said judgment can be satisfied.

ALBERT H. WILSON.

Subscribed and sworn to before me this 20th day of June, A. D. 1901.

[SEAL.]

N. F. BURKE,
Notary Public, D. C.

Writ of Capias ad Satisfaciendum.

Issued June 22, 1901.

Supreme Court of the District of Columbia.

THE BOKEL GWYNN MCKENNEY COMPANY OF Baltimore City, a Corporation Duly Organized under the Laws of the State of Maryland,	} At Law. No. 44755.
<i>vs.</i> JOHN F. COSTELLO.	

The President of the United States to the marshal for the District of Columbia, Greeting:

12 The plaintiff having filed in this cause the oath prescribed by section 794 of the Revised Statutes of the United States relating to the District of Columbia, and demanded that the clerk of this court issue a writ of *capias ad satisfaciendum* against the defendant—

Therefore you are hereby commanded to take the said John F. Costello, if he be found in the District of Columbia, and him safely keep so that you have his body before the supreme court of the District of Columbia immediately after the execution of this writ, to satisfy the plaintiff one hundred dollars and fifty-three cents (\$100.53) recovered against said defendant before Charles S. Bundy, Esquire, one of the justices of the peace in and for the District of Columbia, on the 11th day of May, 1901, together with interest thereon from February 28, 1900, and the sum of three dollars and forty-five cents (\$3.45) for its costs and charges about said suit expended, all as set forth in a certified copy of said judgment filed in the clerk's office of the supreme court of the District of Columbia, for the purpose of lien and execution, as provided by section 1022 of the Revised Statutes of the United States, relating to the District of Columbia, on the 19th day of June, 1901, together with six dollars and forty

cents (\$6.40) additional costs, by said plaintiff expended in this court.

And have you then and there this writ.

Witness the Honorable Edward F. Bingham, chief justice of said court, this 22d day of June, A. D. 1901.

[SEAL.]

JOHN R. YOUNG, *Clerk.*

Marshal's Return.

Cepi. June 25, 1901.

AULICK PALMER, *Marshal.*

13

Order Extending Time to File Record.

Filed in open court March 4, 1902.

In the Supreme Court of the District of Columbia.

In re JOHN F. COSTELLO. *Habeas Corpus.* No. 306.

Upon motion of the petitioner, by his attorney, Henry E. Davis, it is ordered that the time within which to file the transcript of record of this case in the Court of Appeals be, and hereby is, extended for the period of ten days from the expiration of the forty days allowed by rule of court; and, further, it is ordered that the recognizance taken herein, at the petitioner's request and in the presence of his surety, be, and hereby is, continued until the 15th day of April, 1902.

E. F. BINGHAM,
Chief Justice.

March 4, 1902.

14

Instructions for Preparation of Record.

Filed March 12, 1902.

In the Supreme Court of the District of Columbia.

JOHN F. COSTELLO, Petitioner,	}	<i>Habeas Corpus.</i> No. 306.
<i>vs.</i>		
AULICK PALMER, Respondent.		

John R. Young, Esquire, clerk.

SIR: Please prepare as and for the transcript of record on the appeal in the above-entitled cause the following:

(1.) The petition in the said cause and the return thereon.
(2.) The order remanding the petitioner herein and the appeal therefrom.

(3.) The certified transcript of judgment of O'Neal, justice of the peace, in *The Bokel, Gwynn, McKenney Company versus John F. Costello*, No. 44755, at law, in the supreme court of the District of Columbia.

(4.) The affidavit for the writ of *capias ad satisfaciendum* in the last-mentioned cause.

(5.) The said writ of *capias ad satisfaciendum*.

HENRY E. DAVIS,
CRANDAL MACKEY,
Attorneys for Petitioner.

15 Levi H. David, Esquire, attorney for the Bokel, Gwynn, McKenney Company, and Aulick Palmer, respondent.

SIR: Please take notice that we have this day filed with the clerk of the supreme court of the District of Columbia the foregoing direction for a transcript of record on appeal in the case of Costello, petitioner, *vs.* Palmer, respondent, *habeas corpus*, No. 306.

Respectfully,

HENRY E. DAVIS,
CRANDAL MACKEY,
Attorneys for Petitioner.

16 *Writ of Fi. Fa.*

Issued June 19th, 1901.

In the Supreme Court of the District of Columbia.

THE BOKEL GWYNN MCKENNEY COMPANY,	}	At Law. No. 44755. Judgment of J. P.
A corporation, Plaintiff,		
<i>vs.</i>		
JOHN F. COSTELLO, Defendant.	}	

The President of the United States to the marshal for said District,
Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the defendant you cause to be made \$100.53, with interest thereon from February 28, 1900, which the plaintiff, on the 11th day of May, 1901, by the judgment in the above-entitled cause, recovered against said defendant before C. S. Bundy, a justice of the peace in and for the District of Columbia, for money found payable to said plaintiff, and \$7.95 for costs and charges about said suit expended, as appears of record; and return this writ into the clerk's office of said court within 60 days, exclusive of Sundays, so indorsed as to show when and how you have executed the same.

Witness the Honorable Edward F. Bingham, chief justice of said court, the 19th day of June, A. D. 1901.

[SEAL OF COURT.]

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS,
Assistant Clerk.

17 *Marshal's Return.*

Returned June 21, 1901, "*nulla bona.*"

AULICK PALMER,
U. S. Marshal.

Appellee's Directions to Clerk.

Filed March 14, 1902.

In the Supreme Court of the District of Columbia.

JOHN F. COSTELLO }
vs. } *Habeas Corpus.* No. 306.
AULICK PALMER. }

John R. Young, Esq., clerk.

DEAR SIR: In addition to the papers asked to be included in the transcript on behalf of the appellant, please insert the following additional papers:

1. Order of court allowing the petitioner to bail pending his appeal to Court of Appeals.

2. Recognizance.

3. Mem. enlarging recognizance until April 15, 1902.

4. Writ *fi. fa.* and return of marshal in Bokel, Gwynn McKenney Co. vs. Costello, No. 44755.

Wash., D. C., M'ch 14, 1902.

LEVI H. DAVID,
Attorney for the Respondent.

O. K.

CRANDALL MACKEY.

18 UNITED STATES OF AMERICA, {
District of Columbia, } ss:

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 17, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 306, *habeas corpus*, wherein John F. Costello is petitioner and Aulick Palmer, marshal of the United States in and for the District of Columbia, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District,
Columbia. this 14 day of March, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1191. John F. Costello, appellant, vs. Aulick Palmer, U. S. marshal, D. C. Court of Appeals, District of Columbia. Filed Mar. 19, 1902. Robert Willett, clerk.

